



Atlanta Public Schools

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Robert W. Beman  
Chief Information Officer

**Via Express Mail (USPS)**

May 27, 2003

Federal Communications Commission  
Office of the Secretary  
9300 East Hampton Drive  
Capitol Heights, MD 20743

**Re: CC Docket Nos. 96-45 and 97-21**

**Please Respond To:**

Dr. Beverly L. Hall  
Superintendent  
Atlanta Public Schools  
210 Pryor Street, S.W.  
Atlanta, Georgia 30303-3624  
blhall@atlanta.k12.ga.us  
Phone 404.827.8075  
Fax 404.827.8320

Mr. Robert Beman  
Chief Information Officer  
Atlanta Public Schools  
210 Pryor Street, S.W.  
Atlanta, Georgia 30303-3624  
rbeman@atlanta.k12.ga.us  
Phone 404.827.8250  
Fax 404.827.8486

**Documents Containing SLD Action On Appeal:**

Administrator's Decision on Appeal  
Date: April 3, 2003  
Funding Year 2002: 2001-2002  
Applicant Name: Atlanta Public Schools  
Application Number: 252678

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**Nature of Appeal:**

This letter serves as a formal appeal from an adverse decision by the  
Schools and Libraries Division ("SLD") of the Universal Service Administrative

210 Pryor Street, S.W.  
Atlanta, Georgia, 30303-3624  
P 404-827-8250  
F 404-827-8486  
www.atlanta.k12.ga.us

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Company. The Atlanta Public Schools ("APS") (1) appeals the reclassification of requested funds from one-time charges to recurring charges, (2) appeals the denial of payment to approved service provider Bellsouth<sup>1</sup>, and (3) requests other relief deemed appropriate.

**Facts:**

E-rate has long assisted APS with obtaining affordable telecommunications and Internet access. APS, due to its poverty level and the status of its population served, is usually funded at the eighty to ninety percent (80-90%) discount rate. Because of the urgent need, for the past two years, APS has been awarded approximately forty (40) percent of the funds awarded to all Georgia schools.

On January 17, 2001, APS submitted a 470 application, number 77304000298850, for SLD Year 4 funding which included a request for telecommunications services. The Block 5: Discount Funding Request ("Block 5") for telecommunications services requested \$15,100,011 for non-recurring charges and \$0 for recurring charges, and designated BellSouth as the service provider.

On August 7, 2001, a Funding Commitment Decision Letter (FCDL) was issued, in response to the 471 application, Number 252678, which assigned Funding Request Number (FRN) 634307 to the request for telecommunications charges and approved a pre-discount amount of \$14,986,518.00 with an 84% discount percentage. The Funding Commitment Decision stated "\$12,588,675.12 - FRN approved but modified by SLD". The Funding Commitment Decision Explanation, which amplifies comments in the Funding Commitment Decision, stated, "the estimated monthly charge was changed to reflect the documentation provided by the applicant". <sup>2</sup>

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<sup>1</sup> APS has not been formally advised or notified that there has been an official denial. Nonetheless, based on representations by BellSouth that payment has been denied (or delayed), we are pursuing an appeal of the possible denial.

<sup>2</sup> See discussion of Timelines below.

Based on the FCDL, APS commenced services on July 1, 2001. As required, APS filed Form 486 entitled Receipt of Service Confirmation Form, indicating that BellSouth had commenced services on October 11, 2001. BellSouth provided discounts on bills; therefore they were required to submit Service Provider Invoice Forms (Form 474) and invoices for the services. In November, BellSouth submitted invoices under FRN 634307 in the amount of \$7,466,243.36. These invoices were denied payment. The given explanation was that the services listed did not fall under FRN 634307 because the submitted invoices contained new installation and one-time setup charges where FRN 634307 authorized recurring charges. On January 30, 2003, BellSouth notified APS that payment had possibly been denied.<sup>3</sup>

Upon investigation, APS determined that the designation of the telecommunication services requested was changed from non-recurring to recurring. Apparently, in e-mails between APS and SLD during the approval process, it was determined that Block 5 contained an error in the description of the telecommunication services. The outlined services in Block 5 were incorrectly listed as "non-recurring" services in the amount of \$15,100,011.00. APS amended FRN number 634307 to reflect reallocation of those costs to "recurring" costs. This subsequent reallocation of \$15,100,011.00 to "recurring" costs corrected the issue at the time, but left no money for "non-recurring" or one-time setup telecommunication services.

APS appealed the denial of the invoices to the SLD which was denied. The denial letter stated that the appeal was denied because "[it] was received more than 60 days after the date of [the] Form 471 Certification-Rejection Letter".

#### **Why Appeal Should Be Granted:**

##### **(1) Reclassification Of Requested Funds As Recurring Charges.**

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<sup>3</sup> To date, it is our understanding that no formal notice has been submitted to BellSouth advising of the denial – the information was communicated over the telephone.

The original application requested \$15,100,011 for non-recurring setup charges. The SLD contacted APS by phone to discuss the specifics of the request. Based on the conversations, APS changed the designation for existing Data Voice only, to recurring. Based on questions raised in a SLD memo dated April 17, 2001, APS determined that it would be appropriate to request the funds for existing voice/data line service be changed to recurring. In accordance with the original application, APS proceeded with the installation of new non-recurring services at over sixty (60) elementary schools.

APS now questions the change to the designation, considering that invoices have been denied based on this. It appears that all funds, not just those for existing voice/data services, were changed to non-recurring.

Also, the FCDL, which did note changes had been made to the request, did not specify specific amounts. It simply stated that monthly charges were adjusted based on documentation submitted by APS. The designation was not clear.

APS feels the it is unreasonable for the SLD to simply choose to award only recurring dollars without written documentation from APS that APS actually wanted all recurring dollars, since the request was only intended to reference existing voice/data lines.

## **(2) Denial Of Payment To Approved Service Provider Bellsouth.**

APS contends that the submitted invoices should be paid. Service has been installed in over sixty (60) elementary schools based on the funding commitment. To disallow the funding simply because the invoice for the service is allegedly inconsistent with the funding request elevates form over substance and irreparably damages APS as many underprivileged students will be denied the benefits of this internet project and they will be denied such benefits simply because an invoice doesn't match a specific category of funding commitment dollars. APS requests an opportunity to modify its contract and billing arrangement to comport to the funding commitment.

### **(3) Timelines.**

The SLD denied this appeal because it was more than 60 days after the date of the FCDL, which they described as the Form 471 Certification-Rejection Letter. (Although the SLD's Administrator's Decision on Appeal references a rejection letter, for the issues contained in this appeal, there was no rejection.<sup>4</sup>) The FCDL and the accompanying explanation were not sufficient to put APS on notice of the issues. The Funding Commitment Decision and explanation simply stated that the FRN was modified; it did not specify how it was changed. It did not clarify that the funding approval was now for recurring charges. The Funding Commitment Decision did not become an issue until BellSouth was notified, over the phone, that their invoices would not be paid. Once APS discovered that there might be a problem, it began to investigate and subsequently filed this appeal. The appeal was submitted to the SLD within sixty (60) days of APS's first knowledge of the adverse action. The adverse action did not become ripe or exist until the decision of the SLD to deny the invoices.

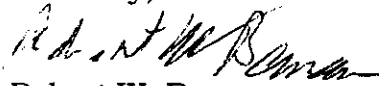
### **(4) Other Relief Deemed Appropriate.**

APS recognizes the difficulty in evaluating these appeals. Thus, APS has acted proactively to bring this matter to your attention in a timely manner. To the extent that any modifications to this appeal are required to obtain an equitable resolution, APS respectfully requests that the modified relief be granted. APS further requests leave to amend this appeal according to additional facts or information that may be uncovered.

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<sup>4</sup> Per the FCDL, FRN 634935 was not funded because the funding cap did not provide for Internal Connections at the less than 90% discount, which is not on appeal. If the FDCL had in fact contained a rejection or denial of funds, then APS would have been required to file an appeal within 60 days. This is not the case here.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert W. Beman". The signature is fluid and cursive, with the first name "Robert" and last name "Beman" being the most legible parts.

Robert W. Beman

CIO

Atlanta Public Schools